THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 9685 of 2007

O r d e r:

The petitioner joined the service of the respondents-BSNL in the year 1972 in a Group-D post. Presently, he is working as Senior Section Supervisor carrying a pay scale of 5500-175-9000. The petitioner states that nine years ago, he was allotted Type 'B' quarter by the respondents. He states that he has been applying for change of quarter from Type 'B' to Type 'C' to the respondents since 2004, and that respondent No. 4, who was also allotted 'B' Type quarter, applied for similar change. The petitioner states that his application was registered at Sl. No.1, while that of respondent No.4 at Sl. No. 3. It is his grievance that though he is much senior to respondent No.4, who joined the service in the year 1980, yet the respondents for extraneous reasons, and contrary to the rules of allotment, have by reason of the order dated 02.11.2005 impugned in the writ petition, have allotted 'C' Type quarter to respondent No.4, which is illegal and arbitrary.

On 01.05.2007, this Court ordered notice before admission. The learned Assistant Solicitor General who took notice for the official respondents took time to file counter. Accordingly, the official respondents filed counter-affidavit and additional counter-affidavit denying the writ averments. However, the notice sent to respondent No.4 returned unserved with an endorsement "refused". Therefore, respondent No.4 shall be deemed to have been served.

The learned Assistant Solicitor General appearing for the official respondents while reiterating the stand taken by the official respondents in the counter-affidavit and additional counter-affidavit submitted that there were three applications in the waiting list, in which

the petitioner stood at Sl. No.1, respondent No.4 at Sl. No.2 and another at Sl. No.3. As there were three eligible applicants for one vacant quarter, they were referred to a Committee, which keeping in view Rule 31 of the Rules for Allocation and Allotment of Quarters, reviewed the matter, recommended the allotment of the vacant Type 'C' quarter to respondent No.4, on out of turn basis, *inter alia* for the following reasons:

1. This only Type-III quarter at Rajareddy Street, Kadapa has been under occupation so far by only Group-a and Group-B officers.
2. The applicant, namely Smt. Ch. B. Ranemma, JTO belongs to SC community.
3. Smt. Ch. B. Ranemma, JTO is a Group-B officer among the listed applicants.
4. Smt. Ch. B. Ranemma, JTO is the only lady officer who applied for allotment of quarter. As Smt. Ch. B. Ranemma, JTO is working in MBM Switch Room, Kadapa, she has to attend MBM Exchange as and when required in case of emergencies.
5. Also she has been nominated as Estate Officer to look after maintenance of quarters.

He submitted that pursuant to the allotment, respondent No.4 also occupied the quarter, and now that petitioner No.1 is placed at No.1 in the waiting list, his case will be considered for allotment, as and when 'C' Type quarter falls vacant. He further submitted that there is no *mala fide* intention in allotting the quarter in favour of respondent No.4

Heard the learned counsel for the petitioner and the learned Assistant Solicitor General for the official respondents.

There is no dispute about the fact that the petitioner is senior to respondent No.4, and that both the petitioner as well as respondent No.4, were occupying Type 'B' quarters, and they applied for change of quarter from 'B' Type to 'C' Type. The application of the petitioner was registered at Sl. No.1, while that of respondent No.4, was registered at Sl. No.2 in the waiting list. Admittedly, as on the date of consideration of their cases for allotment of Type 'C' quarter by the Committee, both the petitioner and respondent No.4, were working in

the same pay group. It is the admitted case of the official respondents both the petitioner and respondent No.4 and one other person, were eligible to be considered for allotment of 'C' Type quarter. That being the admitted case of the official respondents, it may be noticed whether the official respondents, were justified in allotting the Type 'C' quarter to respondent No.4, on out of turn basis.

As per the General Rules of allotment of Quarters, for the purpose of fixation of priority date, the allotment of quarters to individuals officers/officials in each pay group shall be regulated from the entire period of continuous service in the Central Government, and when the priority date of two or more officers/officials is the same, seniority among them shall be determined by the amount of emoluments, and the officers in receipt of higher emoluments shall take precedence over the officers in receipt of lower emoluments. Admittedly, as on the date of allotment, both the petitioner and respondent No.4 were working in the same pay group, and since both of them were working in the same pay group, the official respondents should have allotted Type 'C' quarter, based on the relative seniority of the candidates, in which case, the petitioner who joined in the year 1972 would have stood a good chance against respondent No.4, who joined in the year 1980, but the official respondents, ignoring the priority date, have proceeded to allot Type 'C' quarter to respondent No.4 on out of turn basis for the grounds stated supra.

The allotment of quarter on out of turn basis is permitted only in deserving and exceptional cases, and the criteria to be followed in the matter of allotment is provided under Rule 31 of the Allotment of Quarters, which is as follows:

Criteria: Out of turn allotment of quarters is permitted in deserving and exceptional cases. Generally the criteria to be followed for the grant of out of turn allotment of quarters is as follows:

(a) Where the government servant or a member of his 'family' (as defined for such purposes is suffering from illness and in the opinion of the District

Medical Officer/Civil Surgeon, it is necessary to provide him with suitable accommodation in the interest of his health. In the case of Delhi the Director-General, Health Services, has to be consulted and only cases recommended by him shall be considered.

The recommendations of the Medical Authorities concerned be considered on their merits. There can be no mandatory instructions that their opinion and views should be accepted.

(b) Where the Committee is satisfied that it is essential that accommodation should be provided on account of the special hardships which the official is undergoing for want of suitable accommodation being available; and

(c) Where the Head of the Office is satisfied and certified that the out of turn allotment is necessary in the interest of the public service.

Admittedly, the official respondents, while allotting 'C' Type quarter to respondent No.4, have allotted the same, *de hors* the criteria fixed under Rule 31 of the Allotment of Quarters. It is not the case of the official respondents that allotment of 'C' Type quarter in favour of respondent No.4 necessitated on the ground that either herself or her family members was suffering from an illness, that she has been facing certain hardships and that the Head Office has certified that it is necessary in interest of public service to provide her the said quarter. Since the allotment of 'C' Type quarter by the official respondents in favour of respondent No. 4, on out of turn basis, is not as per the criteria fixed under Rule 31 of the Allotment of Quarters, but on a criteria, which is extraneous to the one fixed under Rule 31 of the Allotment of Quarters, I am of the considered opinion that the allotment of 'C' Type quarter made by the official respondents in favour of respondent No.4, cannot be sustained, and the same is liable to be set aside.

In the result, the writ petition is allowed. The impugned order of the official respondents allotting 'C' Type quarter in favour of respondent No.4, is set aside. Respondent No.4 shall vacate the 'C' Type quarter, which is in her occupation. The official respondents, pass appropriate orders allotting 'C' Type quarter to the petitioner as per the extant Rules governing the Allotment of Quarters, within a

period of four weeks from the date of receipt of a copy of this order.

No costs.

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N.V. RAMANA, J.

Dated: 8th August, 2007.
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